ORIGINAL

1905

FILE No. 13 (FO) 1905-06.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

COURTS

SEPTEMBER

"A" Collection Serial Nos. 1—4

Applications for extradition being sent by Courts direct to the Residency instead of through the Government.

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1904-05.

GENERAL AND REVENUE SECRETARIAT.

COURTS FOR SEPTEMBER 1905.

NOTES.

FILE No. 13 of 1904-05.

Applications for extradition being sent by Courts direct to the Residency instead of through the Government.

From the First Assistant to the Hon'ble the Resident in Mysore, No. 3759, dated 6th July 1905.

Requests to be favored with the views of the Durbar on the proposal in question in consultation with the Chief Court, and states that it will simplify the procedure and be in conformity with that obtaining in British India.

1. Submitted with a draft to the Registrar of the Chief Court for favor of obtaining the views of the Chief Court in the matter.

T. K. S.	S. N.
8-7-05.	8-7-05.

2. The proposal made is most suitable in every way; and, for the additional reason that it is meant as a complimentary acknowledgment of the efficiency of our Courts, we cannot do better than accept it in suitable terms.

3. A draft of a reply will be submitted on receipt of the views of the Chief Court.

K. S. CHENDRASEKHARA AIYAR.
8-7-05.

4. Draft passed.

B. K. VENKATA VARADA IYENGAR.
8-7 05.

2. *The Registrar of the Chief Court, No. J. 163, dated 12th July 1905.*

Forwards copy of Serial No. 1 and requests him to obtain and forward to this office the opinion of the Chief Court in the matter.

3. *From the Registrar of the Chief Court, No. 661—33, dated 22nd July 1905.*

States that the Chief Court is of opinion that a trial may be given to the procedure proposed by the Residency and that District Magistrates be allowed to submit requisitions for the issue of extradition warrants direct to the Residency, but that if the proposed procedure is, on trial, found unsatisfactory, it may be discontinued.

5. A reply to the Residency is due.

T. K. S.	S. N.
28-7-05.	28-7-05.

6. Draft put up.

K. S. CHENDRASEKHARA AIYAR.
29-7-05.

7. Draft submitted to the Dewan Saheb through the First Councillor.

B. K. VENKATA VARADA IYENGAR.
31-7-05.

8. The reply proposed is suitable. The necessary orders may be issued in due course, *i.e.*, on hearing from the Residency.

C. S.
2-8-05.

9. Bring before Council next Wednesday.

P. N. K.
7-8-05.

10. To Council Clerk.

B. K. VENKATA VARADA IYENGAR.
8-8-05.

The papers were duly circulated and submitted to Dewan.

11. A year's statistics may be collected showing in how many cases we refused to apply for warrants and in how many the Resident refused.

P. N. K.
9-8-05.

12. Submitted with statistics for 1905.

Number of applications received for extradition warrants.	Number of cases in which application was refused by Government.	Number of cases in which application was refused by Residency.	Number of cases in which applications were withdrawn by Dist. Magts., for want of evidence.
Forty-seven involving seventy-five persons ...	Nil ...	Nil. ...	Five involving eleven persons.

T. K. S. 12-8-05. S. N. 12-8-05.

K. S. CHANDRASEKHARA AIYAR,
12-8-05.

13. Submitted to the Dewan Saheb.

B. K. VENKATA VARADA IYENGAR.
12-8-05.

14. Circulate to Councillors. I am disposed to adhere to the present practice.

P. N. K.
18-8-05.

15. Circulate again.

B. K. VENKATA VARADA IYENGAR,
19-8-05.

16. Circulated again to the First and Second Councillors.

17. Before sending this out please note the refusals in other years. There are instances of the same.

B. K. VENKATA VARADA IYENGAR.
21-8-05.

18. Statistics for the three previous years is subjoined :—

Years	Number of applications received for extradition warrants	Number of cases in which application was refused by Government	Number of cases in which application was refused by Residency.	Number of cases in which applications were withdrawn by District Magistrates.
1901—02 ...	33 involving 52 persons	2	Nil	1
1902—03 ...	30 do 58 do	2	Nil	1
1903—04 ..	43 do 72 do	5 cases involving 10 persons	2 cases involving 3 persons	Nil
1904—05 ..	47 do 75 do	Nil	Nil	5 involving 11 persons

T. K. S
23-8-05.

S. N.
23-8-05.

19. Now circulate.

K. S. CHANDRASEKHARA AIYAR.
10-6-05.

20. Yes.

B. K. VENKATA VARADA IYENGAR.
23-1-05.

21. I am thankful to the Dewan for pointing out the inexpediency of the course proposed.

22. On further consideration, I find that the only thing to be said in favor of the proposed change is the avoidance of some delay, against which, however, have to be set off (1) the want of scrutiny by the Durbar before applications are returned for further investigation, or are absolutely refused for want of sufficient evidence, or are sent up when satisfied that there is a good *prima facie* case, and (2) the natural hesitancy on the part of our Magistrates to ask the Residency for a reconsideration in the event of a non-compliance with their requisitions, while the Durbar in such cases can, with greater freedom go up to the Resident either after, or without, ordering a further enquiry and obtaining additional information or fresh evidence. It is also desirable that in so important a matter as an extradition proceeding, the initiation and progress of correspondence with the Resident should rest with the Durbar as heretofore instead of being delegated to Subordinate Courts as suggested. The present practice has led to no serious inconvenience, and, while thanking the Resident for his kind suggestion and complimentary reference, we may say that all things considered, the balance of advantage is in the Durbar's opinion in favor of the continuance of the existing practice. We may add that the Chief Court are not without their own misgivings in regard to the advisability of the change, for they have only suggested a trial being given and observed that if the proposed procedure is, on such trial, found unsatisfactory, it may be discontinued. As to the "simplification of the procedure in the direction of conformity with that allowed in British India," it is believed that the Magistrates and the Police in British India correspond direct with each other in such matters, and that the intervention of a higher authority is not required there as is the case in a Native State like Mysore.

C. S.
25-8-05.

23. I admit there is much force in the First Councillor's note above, nevertheless, I consider that the proposal made by the Residency may be given a trial for a short time. Out of a total number of 153 applications for warrants made during the last four years, Government refused to comply in nine cases and the Residency only in *two* cases.

C. M.
25-8-05.

24. Submitted to the Dewan Saheb.

B. K. VENKATA VARADA IYENGAR.
25-8-05.

25. *From the Dewan to Mr. A. E. Staley, Chief Judge, D. O., dated Mysore the 2nd September 1905.*

With reference to your official letter No. 661-33, dated 22nd July 1905, about the direct submission of requisitions for the issue of extradition warrants by the District Magistrates to the Residency, I beg to draw your kind attention to certain features of the case. You recommend that the proposed procedure may be given a trial and that it may be discontinued, if found unsatisfactory. The conferment of this power on our Courts would have to be notified under the rules. It would doubtless be complimentary to the Courts concerned; but it cannot be withdrawn, in case the experiment fails, without implying damaging reflection on the recipients of the power. A much better course would be to consider whether any change is really called for and what would be the effects of the change, if accepted. The present system is admittedly working well, and no such delays have occurred in practice as would warrant the proposed change. Hence the necessity for an alteration of the existing procedure is not clear. Besides, (1) the suggested modification would deprive the Government of their administrative control in the matter of extradition warrants. The matter of extradition is so important that the Government should not divest themselves of the power of scrutinizing the proceedings of the subordinate magistracy; (2) It would naturally create hesitancy on the part of our Magistrates to ask the Residency for a reconsideration of the case in the event of a non-compliance with their requisitions, while the Government can with greater confidence and freedom go up to the Resident in similar circumstances; and (3) The supposed analogy between the British Indian Courts and our Courts is not strictly correct.

During the past three years the Government have declined to apply for warrants in nine cases, a circumstance that shows that the check in the Government office is not merely nominal. I shall feel obliged if you can kindly consult your colleagues again and send me your opinions after a consideration of the question in the light of the aspects now put forward. Many of these may probably have struck you already; but the importance of the question is so great as to necessitate a still closer examination. Please excuse trouble. If you like, I shall discuss the subject with you.

From Mr. Justice A. E. Staley to the Dewan, D. O., dated Bangalore the 12th September 1905.

1. With reference to your demi-official letter dated 2nd instant, Camp Mysore, in answer to Chief Court official letter No. 661—33, dated 22nd July 1905, about the direct submission of requisitions for the issue of extradition warrants by the District Magistrates to the Resident, I have consulted the other Judges and send you appended to this letter a copy of their opinions.

2. We have nothing in our office so far as can be traced to show whether the present system is working well, whether any delays have occurred in practice such as would warrant the proposed change, or what would be the effects of the proposed change. The Government having had administrative control in the matter of extradition warrants hitherto alone know how far that control has hitherto been necessary. All I can say is that the District Magistrates of Mysore are certainly not less and I think considerably more careful and thorough in their Judicial work and legal knowledge than the District Magistrates of British Districts with whose work I have been dealing for many years, and I do not see why they should not be as much trusted in the matter of extradition warrants as the latter. As to the question of policy we have no data, and it is best for the Government of Mysore to decide it, without reference to us.

ENCLOSURE TO THE ABOVE.

Opinions.

I have nothing to say against the Government being the medium of communication with the Residency in this matter.

2. It is also true that the Government may be able to urge an application for warrant with stronger force than a District Magistrate. But there is nothing to show that the District Magistrate cannot invoke the aid of Government if the Residency should refuse his application.

3. It must also be considered that the proposal of the Dewan will amount to a confession of distrust in our District Magistrates and add to unnecessary centralization of work in the Secretariat.

4. I think that in the interests of administrative efficiency it is desirable to give the power to District Magistrates and see that they do their work well.

(Signed) A. RANGASWAMI IYENGAR.
9-9-05.

I do not think there is any necessity to alter the existing procedure.

(Signed) H. V. NANJUNDAYYA.
10-9-05.

27. The accompanying records contain a discussion of the question whether some of the Magisterial Courts of Mysore may be authorized to apply for extradition warrants direct to the Resident. The proposal emanated from the latter and has been considered by the Council and the Chief Court.

28. The Chief Court at first said that the proposal might be tried and given up, if found unsatisfactory. It was considered expedient to refer the question for their re-consideration explaining its pros and cons to some extent. (*Vide* my letter dated the 2nd September 1905.) One of the Judges does not see the necessity for the proposed change. The second Judge is in favor of it though he has nothing to say against the retention of administrative control by the Government in extradition matters. The Chief Judge thinks that our District Magistrates can be trusted with the suggested power; but he adds that the Government alone can best judge of the need for retaining in their hands the administrative control and of the policy of allowing subordinate Magistrates to correspond directly with the Residency.

29. In the Council, the Second Councillor is in favor of introducing the rule as an experiment. The First Councillor and I are opposed to the change. In the first place, there is no necessity for any alteration. There have been no delays; and as the Resident admits, the existing system has been working well. In the second place, it is inexpedient to transfer the administrative control in extradition matters from the Government to the Resident. Extradition questions are not merely formal, but often involve a careful weighing of the evidence forthcoming against the accused. Beyond the fact that it may be viewed as complimentary to our Magistrates to invest them with the power to correspond directly with the Resident in this matter, no other advantage results from the proposal under consideration; while the disadvantages are overbearing.

30. In these circumstances, I beg to propose that a reply may be sent to the Resident thanking him for the proposal, bnt pointing out that the Government of His Highness consider it inexpedient to alter the existing system as it has been admittedly working well.

P. N. K.
20-9-05.

Order.

31. I agree with the Dewan.

K. R. W.
H. H. the Maharaja.
25-9-05.

32. Reply accordingly.

P. N. K.
27-9-05.

To the First Assistant to the Hon'ble the Resident in Mysore, No. Pol. 262, dated the 30th September 1905.

States that the Durbar think it inexpedient to alter the existing system, which serves to continue their indispensable administrative control over the District Magistrates in such an important matter as extradition.

Proceedings of the Government of His Highness the Maharaja of Mysore, Courts, September 1905.

Applications for extradition being sent by Courts direct to the Residency instead of through the Government.

FILE No. 13 OF 1905-06.

Letter No. 3759, dated the 6th July 1905, from R. C. H. Moss King, Esq., I. C. S., First Assistant to the Resident in Mysore, to the Dewan of Mysore.

I am directed to invite a reference to my endorsement No. 2773, dated the 8th June 1904, forwarding a copy of a Notification of the Government of India in the Foreign Department, No. 1862 I. A., dated the 13th May 1904, containing rules issued under the Indian Foreign Jurisdiction) Order in Council, 1902, and section 22 of the Indian Extradition Act, (1903 (XV of 1903). **Serial No. 1.**

2. Rule 2 of the said rules provides that an extradition warrant may be issued by the Resident on the request preferred to him in writing either by or by the authority of the person for the time being administering the Executive Government of the State or by any Court within the State which has been specified in this behalf by the Governor-General in Council. As you are aware, requisitions for the issue of extradition warrants are at present made only by the Durbar at the instance of the local authorities, and the question has been raised whether some of the Courts in Mysore may not, with advantage, be authorized to submit requisitions for extradition direct to the Residency, instead of through the Durbar.

3. The existing practice has doubtless worked well, but it is possible that it may give rise to undesirable delays in securing extradition, in particular cases, and, moreover, the submission of requisitions direct by District Magistrates would simplify the procedure in the direction of conformity with that followed in British India. Finally, it is hoped that the conferment of these new powers upon responsible Courts in the State will be regarded by His Highness' Government as a complimentary acknowledgment of the manner in which such Courts discharge their judicial functions.

4. Mr. Williams will be glad to be favoured at an early date with the views of the Durbar, who will no doubt obtain from the Chief Court of Mysore an expression of their opinion in the matter.

Memo No. J. 163—C. 13-2, dated 12th July 1905.

Copy of the above is forwarded to the Registrar of the Chief Court of Mysore with a copy of the rules under the Indian Extradition Act, XV of 1903, published with Government Proceedings No. 2740-8—J., dated the 20th June 1904, with the request that the views of the Chief Court in the matter may be obtained and forwarded to this office as early as possible. **Serial No. 2.**

Letter No. 661-33, dated Bangalore, 22nd July 1905, from V A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, to B. K. Venkata Varada Iyengar, Esq., Secretary to the Government of Mysore, General and Revenue Department.

Referring to your No J. 163—C. 13-2, dated the 12th instant, I am directed to state that the Chief Court would advise that a trial be given to the proposal contained in the letter from the First Assistant to the Resident, dated the 6th idem, and District Magistrates allowed to submit requisitions for the issue of extradition warrants direct to the Residency. If the proposed procedure is, on trial, found unsatisfactory, it may be discontinued. **Serial No. 3.**

Letter No. Pol. 262, dated the 30th September 1905, from B. K. Venkata Varada Iyengar, Esq., Secretary to Government, Gen. & Rev. Department, to R. C H. Moss King, Esq., I.C.S., First Assistant to the Resident in Mysore.

I am directed to acknowledge with thanks the receipt of your letter No. 3759, dated the 6th July 1905, enquiring whether some of the Courts in Mysore may not be authorized to send requisitions for extradition warrants direct to the Honorable the Resident. **Serial No. 4.**

2. The Government of His Highness the Maharaja consider it inexpedient to alter the existing system, which has unquestionably been working well and which serves to continue their indispensable administrative control over the District Magistrates in such an important matter as extradition.